

Order 162-20/21
Passage: 7-2 (Fournier, Zarro) on 2/1/2021

Effective 2/11/2021

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING A LIVE STREAMING AGREEMENT BETWEEN
LIVEBARN INC. AND THE CITY OF PORTLAND FOR THE TROUBH ICE ARENA**

ORDERED, that the Live Streaming Agreement with LiveBarn Inc. is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the Live Streaming Agreement and whatever other documents are necessary to effect the intent and purpose of this order.

DATE: February ____, 2021

BETWEEN: LIVEBARN INC. (“LiveBarn”), a
_____corporation with a mailing address of _____

and

City of Portland, Maine, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 _____ (“Venue Owner”)

WHEREAS LiveBarn Inc. and Venue Owner wish to enter into this Agreement pursuant to which LiveBarn will install at Venue Owner’s Ice Rink Sheet described in the attached Schedule “A” (each being an “Ice Rink Sheet”) a fully automated sports broadcasting system for the delivery of live and/or on demand video and audio streaming to internet connected devices such as smartphones, computers or tablets (the “Automated Online Broadcast Service”);

NOW, THEREFORE, in consideration for the mutual promises set out below, and for other good and valuable consideration acknowledged by the parties, LiveBarn and Venue Owner agree as follows:

1 AUTOMATED ONLINE BROADCAST SERVICE

1.1 LiveBarn shall, at its own expense, install and maintain all hardware, software and internet bandwidth required for the operation and maintenance of the Automated Online Broadcast Service in regards to each Ice Rink Sheet. The initial installation will occur within six months from the date of this Agreement (such date being herein referred to as the "Install Date"); it will be scheduled with the written approval (including email) of Venue Owner, and concurrently with the installation, LiveBarn will specifically explain to Venue Owner representative onsite exactly where any hardware or other components will be installed. Installation will then only proceed with the consent of Venue Owner which consent will be deemed upon LiveBarn undertaking its installation. The initial installation for each Ice Rink Sheet shall include one (1) computer, one (1) router, one (1) modem, between one (1) and three (3) power converters, and up to two (2) cameras to be placed on the side walls or on the beams or columns extending from the walls. The internet connection and computer shall be located adjacent to the respective Ice Rink Sheet in a secure location with electrical power outlets. The exact selection of camera locations will be made after consideration for optimal broadcast quality and avoidance of any obstruction. Any modification to the installation will only be undertaken with the permission and process with Venue Owner as outlined above. Venue Owner shall assume the cost of electricity for the components installed in connection with this Agreement.

1.2 In addition LiveBarn shall, at its expense and upon Venue Owner’s request, install one advertising management box adjacent to a TV screen that is provided by the Venue. The LiveBarn advertising management

box will continuously display a combination of LiveBarn highlights and a Live feed, as well as additional information, including Venue Owner’s own unique code described in Subsection 1.5.

1.3 Title to all hardware, software, and wiring shall remain in the name of LiveBarn.

1.4 All content broadcast using the Automated Online Broadcast Service, including the video and audio relating to all sports and recreational activities occurring on each Ice Rink Sheet (collectively, the “Content”), will be made available to LiveBarn’s subscribers on a monthly subscription basis, subject to sections 1.7 and 1.8 below. LiveBarn will determine the pricing for its offerings of the Automated Online Broadcast Service. From time to time LiveBarn may provide a free trial at its discretion.

1.5 Revenue generated from the Automated Online Broadcast Service will be the property of LiveBarn; however, LiveBarn will supply Venue Owner with a unique code to enable it to market and solicit new memberships for LiveBarn, for which LiveBarn will pay Venue Owner thirty percent (30%) of the revenues generated from these memberships over the full lifetime of these memberships - until such membership is discontinued. The above code will enable Venue Owner to solicit LiveBarn memberships by providing potential members with the attraction of a 10% discount. This code will track the memberships generated by Venue Owner on a quarterly basis. The above payments to Venue Owner will only apply to LiveBarn memberships originated with the unique code allocated to Venue Owner. LiveBarn will pay Venue Owner its revenue share within 30 days of the end of each calendar quarter together with a corresponding revenue statement, and this revenue share distribution will commence upon Venue Owner achieving an average total of 20 code subscribers per month (from amongst all its codes - 60 total) per Ice Rink sheet, in a calendar quarter. Venue Owner will provide a staff person to communicate with and receive LiveBarn’s various local marketing initiatives (including social media) as described below. Upon request from Venue Owner, LiveBarn shall provide Venue Owner with reasonable documentation evidencing all revenues earned under this Agreement.

1.6 LiveBarn shall be the exclusive owner of all rights in and to the Content, and shall have the exclusive right to broadcast the Content for all purposes and in any manner it determines in its sole discretion, including by providing its broadcast signal to national broadcasters and digital media distributors. Without limiting the foregoing, the Venue Owner acknowledges that online distributions of the Content from each Ice Rink Sheet will be made available to all subscribers of the Automated Online Broadcast Service, subject to sections 1.7 and 1.8 below.

1.7 LiveBarn will provide Venue Owner with an exclusive online administrative password to enable Venue Owner in its discretion to “blackout” any particular dates or

time periods from being broadcast on any selected Ice Rink Sheet (the “Blackout Restrictions”).

1.8 LiveBarn will also provide Venue Owner with the ability in its discretion to restrict viewer access to any broadcasts from its Venue to a pre-selected potential audience for privacy purposes.

1.9 During the Term (as defined below), LiveBarn will provide Venue Owner with three (3) complimentary LiveBarn accounts for each Ice Rink Sheet.

1.10 LiveBarn will hold Venue Owner harmless for any injuries to LiveBarn employees and agents in connection with their work.

2 TERM AND TERMINATION

2.1 The term of this Agreement commences on the date hereof and continues until the six year anniversary of the Install Date (the “Term”). The first, and each successive 12-month period after the Install Date shall be referred to as a “Contract Year.”

2.2 Notwithstanding the foregoing, but subject to Subsection 3.1 below, either party shall have the right to terminate this Agreement for any reason upon giving (90) days written notice to the other party. In the event that Venue Owner terminates this Agreement without cause during one of the first 5 Contract Years, it shall pay LiveBarn an early termination fee according to the following payment schedule:

Contract Year	Early Termination Fee
1	\$37,500.00
2	\$30,000.00
3	\$22,500.00
4	\$15,000.00
5	\$7,500.00

There shall be no early termination fee if Venue Owner terminated this Agreement without cause during the sixth Contract Year.

2.3 Upon termination of this Agreement by expiration of the term or for any other cause, LiveBarn shall, at its own cost and expense, remove all hardware, software and wiring from Venue Owner's location.

2.4 Venue Owner shall have the right to terminate this Agreement if LiveBarn materially breaches this Agreement and the material breach is not cured to within thirty (30) days after Venue Owner provides written notice which outlines such breach to LiveBarn.

3 EXCLUSIVITY

3.1 In consideration for the investment of time and expense incurred by LiveBarn to fulfill its obligations under this Agreement, the receipt and sufficiency of which

is hereby acknowledged, the Venue Owner hereby declares and agrees that LiveBarn shall have the absolute exclusivity to broadcast Content from each of the Ice Rink Sheets using an automated (without individuals operating cameras) online broadcasting system until the expiration or earlier termination of this Agreement.

3.2 The Venue Owner hereby declares and acknowledges that the foregoing exclusivity, including the term thereof, is reasonable in the circumstances, and that LiveBarn is relying upon such exclusivity in connection with the provision of the Automated Online Broadcast Service and that LiveBarn would not have entered into this Agreement without such exclusivity. However, the foregoing exclusivity shall not apply should LiveBarn cease operations or to the extent Venue Owner terminates this agreement in accordance with section 2.4.

3.3 Venue Owner acknowledges and agrees that, in the event of a breach or threatened breach by it of the provisions of Subsection 3.1 above, LiveBarn will have no adequate remedy in money or damages and, accordingly, shall be entitled to seek an injunction in a court of competent jurisdiction against such breach. However, no specification in this Agreement of any specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach of any of the provisions of this Agreement.

4 SUPPLY OF AUTOMATED ONLINE BROADCAST SERVICE

4.1 LiveBarn will use reasonable skill and care, in accordance with applicable industry standards, to make the Automated Online Broadcast Service available throughout the Term. Notwithstanding the foregoing, LiveBarn shall have no responsibility, liability, or obligation whatsoever to Venue Owner, or any other third party, for any interruptions of the Automated Online Broadcast Service. Notwithstanding the foregoing, if the Automated Online Broadcast Service remains interrupted for more than 5 days, it shall be considered a material breach for which Venue Owner shall have the right to terminate this Agreement, subject to the notice and cure provisions in section 2.4.

4.2 LiveBarn may, without any liability to Venue Owner, suspend the supply of all or part of the Automated Online Broadcast Service upon giving Venue Owner notice. This would only occur if the LiveBarn equipment is repeatedly damaged or LiveBarn is unable to obtain a sufficient internet signal to the venue. If such suspension lasts for more than 5 days, it shall be considered a material breach for which Venue Owner shall have the right to terminate this Agreement, subject to the notice and cure provisions in section 2.4.

4.3 The Venue Owner agrees to notify LiveBarn by email to venuesupport@livebarn.com as soon as practicable after it becomes aware of any interruption or malfunction with the Automated Online Broadcast Service. Venue Owner will not be responsible for damage or malfunction

of any equipment and LiveBarn will repair or replace at its cost any malfunctioning components which is required. Any required service visit by LiveBarn will be scheduled as soon as practicable with the written approval (including email) of Venue Owner. LiveBarn will specifically explain the repair, replacement or service work to Venue Owner representative onsite and this work will only proceed with the consent of Venue Owner.

4.4 From time to time there will be on site adjustments requiring assistance from a reasonably technically proficient person at the Venue. Venue Owner will use reasonable efforts to supply such person when necessary.

5 NOTICE TO PUBLIC

5.1 The Venue Owner agrees to post a notice at the entrance to its venue and inside each Ice Rink Sheet, advising the public that the venue is monitored by video cameras for security, safety and commercial purposes, and participants waive any claim relating to the capture or public transmission of his/her participation while at the venue. LiveBarn will supply and post these notices during its initial installation and from time to time during the Term, which notices will be subject to Venue Owner's approval.

5.2 In all agreements with parties for usage of the Venue, Venue Owner will include provisions both disclosing the existence of LiveBarn broadcasting at the Venue and requiring such parties to notify all their users of the Venue of this.

6 MARKETING

6.1 Venue Owner agrees to take reasonable steps to promote LiveBarn through all available avenues discussed in this section, understanding that it is in Venue's best interest financially to market LiveBarn to their customers and patrons. LiveBarn will also provide, at its expense, a minimum of one (1) 2.5 x 6' color printed standing banner, branded with Venue Owner's unique code described in Subsection 1.5, to be displayed within Venue Owner's lobby in a prominent location. Venue Owner understands that failure to comply and make reasonable promotion and marketing efforts may result in lower revenue share payments to Venue Owner.

6.2 Venue Owner will provide a marketing contact person (s) who will be responsible for interacting with LiveBarn and becoming knowledgeable about the various LiveBarn marketing and promotion initiatives. Upon installation of LiveBarn, Venue Owner will make said contact available for a 30 minute video web session, serving as an orientation into all of the best practices for introducing and promoting LiveBarn. This person will subsequently be responsible for implementing promotion and marketing initiatives to Venue's customers and patrons.

6.3 Venue Owner will place a LiveBarn banner or link on their website with a backlink and embedded demo video where possible.

6.4 Venue Owner will announce the LiveBarn installation as well as embed any demo video on all of their social media networks. Venue Owner will also like and follow LiveBarn on said social media networks as well as share content when tagged, acknowledging that this will only be used when venue is directly involved with any video shared.

6.5 Notwithstanding anything to the contrary in this Agreement, Venue Owner shall not be liable to Live Barn for any claims or damages whatsoever arising out of Venue Owner's failure to comply with the provisions set forth in sections 5 and 6 of this Agreement.

7 GENERAL

7.1 Any amendment to this Agreement must be in writing and signed by both parties.

7.2 Although LiveBarn will remain liable for its obligations hereunder, LiveBarn shall be permitted to use agents and subcontracts to perform its installation, maintenance and repair obligations hereunder.

7.3 The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

7.4 If any part of this Agreement is held to be invalid or unenforceable, that part will be severed and the rest of the Agreement will remain in force. Headings herein are for reference only.

7.5 Prior to the execution of this Agreement, LiveBarn will procure and maintain occurrence-based Commercial General Liability Insurance coverage in amounts of not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, death and property damage, \$2,000,000 in Media Coverage Insurance and \$1,000,000 in Cyber Insurance naming the Venue Owner as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law. With respect to the Commercial General, Media Coverage, and Cyber Liability Insurance, LiveBarn shall name the Venue Owner as an additional insured for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Venue Owner under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Venue Owner. Prior to execution of this Agreement, LiveBarn shall furnish the Venue Owner and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the

Venue Owner of termination of insurance from the insurance provider or agent. LiveBarn shall also provide a copy of any endorsement naming the Venue Owner as additional insured. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states the City of Portland is named as an Additional Insured, will not be acceptable. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Upon Venue Owner'S request, LiveBarn shall provide Venue Owner with a complete copy of any of the above-referenced policies. LiveBarn shall be responsible for any and all deductibles and/or self-insured retentions.

To the fullest extent permitted by law, the LiveBarn shall defend, indemnify and hold harmless the Venue Owner, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom, and (2) is caused in whole or in part by any act or omission of the LiveBarn, anyone directly or indirectly employed by it, or anyone for whose act it may be liable. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Venue Owner which otherwise exists. LiveBarn's obligations under this paragraph shall survive termination of this Agreement.

7.6 All notices required under this Agreement must be given in writing and by email to Livebarn at venuesupport@livebarn.com, fmiller@livebarn.com, ray@livebarn.com, martin@livebarn.com and to Venue Owner at its address listed herein. Either party may change its address from time to time by providing notice of such change to the other party.

7.7 This Agreement describes the entire understanding and agreement of the parties, and supersedes all oral and written agreements or understandings between them related to its subject matter.

7.8 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which taken together will be deemed to be one instrument.

7.9 This Agreement is governed by and will be interpreted under the laws of the State of Maine. The parties agree that sny disputes shall be heard exclusively in the Superior Court located in Cumberland County, Maine.

7.10 Intentionally omitted.

7.11 Venue Owner will not be liable to LiveBarn for any damages or lost revenue due to

power loss or shortage, mechanical breakdown, structural damage, roof collapse, fire, flood, renovations, improvements, alterations, closure of the facility by Venue Owner or any regulatory agency, or any other reason that may interfere with the Automated Online Broadcast Service or the use of the Venue.

7.12 LiveBarn consents to Venue Owner promoting in its marketing materials that LiveBarn supplies it with the LiveBarn installed product.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and at the place first above mentioned.

LIVEBARN INC.

Per: _____

VENUE OWNER

Per: _____

Print Name:

PLEASE FILL OUT SCHEDULE

Venue Name and Address:

Name of Each Rink:

(i.e. Rink #1 or Main Rink)

Name:
Work Number:
Cell Phone:
Email Address:

Venue Technical Contact:

Name:
Work Number:
Cell Phone:
Email Address:

**Primary Contact - Venue General
Manager or Decision Maker:**

Name:
Work Number:
Cell Phone:
Email Address:

Secondary Contact or On-Site Manager:

Name:
Work Number:
Cell Phone:
Email Address:

Venue Marketing Contact: